Office-Supreme Court, U.S.
FILED
FEB 1 1985
STEVAS,
CLERK

No. 84-468

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CITY OF CLEBURNE, TEXAS, ET AL.,
Petitioners,

v.

CLEBURNE LIVING CENTER, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE STATE OF MARYLAND AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

STEPHEN H. SACHS,
Attorney General,

DENNIS M. SWEENEY,
Counsel of Record,
Deputy Attorney General,

ELLEN A. CALLEGARY,
Special Assistant to the Attorney General,

JUDITH K. SYKES,
Assistant Attorney General,

REBECCA M. HORNBECK,
Staff Attorney.

February 2, 1985

The Daily Record Co., Baltimore, MD 21202

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INTEREST OF THE AMICUS

This Court is being asked to decide whether the use of a zoning ordinance to exclude a group home for the mentally retarded is an unconstitutional denial of equal

protection. Because group homes for the mentally retarded are essential to the realization of the State's goals, Maryland has a strong interest in the outcome of this case. It is Maryland's policy to avoid unnecessary admissions of the mentally retarded to institutions, to promote responsible deinstitutionalization of the retarded, and to provide a network of small community living arrangements where the retarded can be integrated into the life of the community. See Md. Ann. Code, Health-General Article, Section 7-102.

In order to meet these goals, Maryland has substantially reduced the number of persons in its institutions for the retarded and has even closed one institution completely. At the same time, the number of community residential placements has grown—from 390 in 1978 to 1675 in 1984. However, almost a threefold increase over the present number of community placements will be needed in the future. The State has projected that by 1994 it will need 4,549 community residential beds.[1]

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[1] State of Maryland Department of Health and Mental Hygiene, Mental Retardation and Developmental Disabilities Administration Plan FY 1985-1994, November 1984.

The need for additional community placements in Maryland is particularly acute at this time because of the Consent Decree, pursuant to the Civil Rights of Institutionalized Persons Act, entered into by the State of Maryland and the federal government on January 18, 1985.[2] In order to implement the provisions of that agreement, Maryland is substantially reducing the population of Rosewood, its largest facility for the retarded. The realization of this goal is contingent on an increased number of community based programs for the mentally retarded.

In addition to this Consent Decree, Maryland state law also strongly encourages the placement of disabled individuals in the community. While the law does not require the State to create placements if it does not have the resources, they do indicate a strong preference for community placement. Maryland's civil commitment statute requires the exploration of community alternatives prior to

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[2] United States v. State of Maryland, C. A. No. M-85-227 (D. Md. 1985).

admission to a state institution. Md. Ann. Code, Health-General Article, Section 7-504. If local communities can veto group homes, the right to placement in the least restrictive alternative available will be rendered meaningless.

The projected need for community placements cannot be accomplished if local jurisdictions are in a position to block new group homes for the mentally retarded by the use of exclusionary zoning. It is essential that this Court make it clear that such discriminatory zoning is a violation of equal protection guarantees and will not be tolerated.

SUMMARY OF ARGUMENT

The zoning ordinance[3] at issue in this case is unconstitutional because its discriminatory treatment of the mentally retarded is not reasonably related to any legitimate zoning purpose and, in fact, is based on unfounded and unacceptable prejudices. A finding that this ordinance violates the Equal Protection Clause under rational basis scrutiny would be consistent with this Court's prior decisions. Because there is no conceivable rational basis for Cleburne's exclusionary zoning practice, it is unnecessary for this Court to decide whether mentally retarded persons are a quasi-suspect class for purposes of the Equal Protection Clause.

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[3] City of Cleburne, Texas Zoning Ordinance (Pl. Ex. 1).

ARGUMENT

I. Introduction

This Court has been asked to review the Fifth Circuit Court of Appeals' finding that a Cleburne zoning ordinance is unconstitutional under an intermediate scrutiny Equal Protection analysis. Cleburne has challenged this finding on the basis that the mentally retarded are not a quasi-suspect class. However, this Court need not reach the question of whether the mentally retarded are a quasi-suspect class. See Zobel v. Williams, 457 U.S. 55, 60-61 (1982); see also Stanton v. Stanton, 421 U.S. 7, 13 (1975). Cleburne's ordinance was written in the "dark ages" of our understanding about the proper treatment of retarded persons and today cannot withstand the light of the most minimal rational basis scrutiny.

Amicus State of Maryland urges this Court to affirm the invalidation of the Cleburne zoning ordinance on Equal Protection grounds using a rational basis analysis. In the alternative, this Court should remand to the court below so it may hold the ordinance invalid after receiving guidance as to the appropriate analysis. Whatever course is taken in

this regard, it is vitally important that this Court clearly deliver the important message that there is sufficient "bite" even under the rational basis test to invalidate zoning ordinances which discriminate against the mentally retarded.

II. The Ordinance's Exclusion of Homes for the Mentally Retarded is Not Rationally Related to any Legitimate Governmental Purpose.

In order to be held valid under the Equal Protection Clause, legislation must, at the very least, classify the persons it affects in a manner rationally related to legitimate governmental objectives. E.g., Schweiker v. Wilson, 450 U.S. 221, 230 (1981). The zoning ordinance states as its objective the usual general language as to promotion of health, safety, and welfare of the community. While this is a legitimate purpose, it is not furthered by the exclusion of group homes for the mentally retarded from its least restrictive residential district.

The City itself implicitly recognized this flaw in its argument and so has attempted to justify this exclusion by going beyond these general purposes. Thus, it argued that

the following purposes not even found in the ordinance were among the statute's objectives: "to protect the serenity of the existing neighborhoods," "to protect neighbors from harm," and "to protect the mental retardates themselves by providing an appropriate living environment." Cleburne Living Center v. City of Cleburne, Texas, 726 F.2d 191, 200 (5th Cir. 1984).

These post hoc rationalizations by the city should be regarded with skepticism by this Court. "When no indication of legislative purpose appears other than the current position of the [person implementing the statute], the Court should require that the classification bear a fair and substantial relation to the asserted purposes." Schweiker v. Wilson, supra, 450 U.S. at 244-245 (Powell, J., dissenting) (citation omitted).

As the record in the court below demonstrates, the Cleburne ordinance does not have that requisite fair and substantial relationship. It does not even meet the ordinary rational relationship requirement. The Court below found that "[n]othing in the record indicates that mentally retarded persons - and particularly those admitted into group homes -

are more disruptive or dangerous than other people ... The discrimination between the mentally retarded and other persons is not explained by recourse to neighborhood serenity." Cleburne, supra, 726 F.2d at 201.

The City's argument that the requirement of a special use permit was justifiable "to protect the mental retardates themselves" is also unpersuasive. First, as the court below found, the ordinance could have served their interests more directly by setting specific requirements for group homes for the retarded. Id. at 201. The absence of such specific requirements merely creates a potential for blanket discrimination, fueled by the fears and prejudices of the neighbors. Ibid. Second, the Department of Human Resources, not the City Council, would be the appropriate authority for determining whether a particular residence met the needs of the retarded. See id. at 193; J.A. 77.

In sum, analysis of the classification at issue in this case leads to the inevitable conclusion that this discriminatory classification is unrelated to any legitimate zoning purpose.

III. This Ordinance Violates Equal Protection Because It is Based on Outdated Concepts Which Are No Longer Acceptable.

The Cleburne city ordinance should fail not only because there is no evidence that it furthers any legitimate governmental purpose, but also because it is based on outdated concepts which are no longer acceptable. In fact, Cleburne's zoning ordinance was enacted 20 years ago at a time when mentally retarded people were locked away in large, isolated institutions. See Cleburne, supra, 726 F.2d at 197 (citation omitted). In 1965, there was no strong national movement to remove the stereotypes about the mentally retarded and to integrate them into the community. As Respondent's expert testified, the image of the mentally retarded which has emerged relatively recently is that they are genuine human beings with the same needs and rights as the rest of humanity with perhaps more obstacles to overcome. J.A. 41. In 1965, it was considered acceptable to separate the retarded from the community. This zoning ordinance's exclusion of "hospitals" for the "feeble-minded" reflects the mistaken preconceptions of that time.

These irrational fears cannot form an acceptable basis for the City's discriminatory classification of the retarded. Equal protection of the law requires a rational basis for Cleburne's classifications. This ordinance fails to provide equal protection to the mentally retarded not only because it has no rational basis, but because it is clearly based on an irrational fear of the mentally retarded. This Court faced an analogous outdated prejudice in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). Justice Powell, in his concurrence, found a regulation requiring a pregnant teacher to take maternity leave five months before the birth of her child to be violative of equal protection using a rational basis analysis. Id. at 653. Justice Powell stated that:

> "[t]he records before us abound with proof that a principal purpose behind the adoption of the regulations was to keep visibly pregnant teachers out of the sight of schoolchildren. The boards do not advance this today as a legitimate objective, yet its initial primacy casts a shadow over these cases. Moreover, most of the after-the-fact rationalizations proposed by these boards are unsupported in the records."

Ibid. (footnote omitted). This Court should find that the

neighbors in this case have no legitimate interest in keeping the retarded out of their sight any more than the Cleveland Board of Education could be said to have a legitimate interest in keeping pregnant women out of the sight of children.

This Court also noted that "[n]otions of what constitutes equal treatment for purposes of the Equal Protection clause do change." Harper v. Virginia State Board of Elections, 383 U.S. 663, 669 (1966). This principle was reiterated in Stanton v. Stanton, 421 U.S. 7 (1975), in which this Court found that no matter which standard was applied, a statute based on "old notions" no longer considered acceptable as to women's place in society would be found to be invalid.

Even the City's after-the-fact rationalizations reflect unfounded and unacceptable concepts that mentally retarded people are disruptive, dangerous and make undesirable neighbors. Thus, this Court should find that Cleburne's zoning ordinance denies mentally retarded people the equal protection of our laws because it is based on irrational and outdated notions of their place in our communities.

IV. A Finding That The Cleburne Ordinance Fails The Rational Basis Test Is Consistent With Prior Decisions of This Court.

While this Court has traditionally shown great respect and deference for the decisions of lawmakers, the rational basis test is not a "toothless" one. E.g., Logan v. Zimmerman Brush Company, 455 U.S. 422, 439 (1982) (Blackmun, J., separate opinion). This Court has not hesitated to reject implausible arguments and find statutes invalid when, as in this case, the arguments made do not withstand analysis. See Zobel v. Williams, 457 U.S. 55 (1982). In Zobel, this Court rejected all of the reasons advanced by the legislature for its scheme to allocate dividends from its mineral income fund among its residents. This Court concluded that no valid state interests were rationally served by a distinction based on the length of a person's residence. The City has similarly shown no valid interests which are rationally served by the distinction it makes between homes for the mentally retarded and facilities for which no permits are required.

Recent cases in which this Court has upheld government action using the rational basis test are clearly distinguishable. In Schweiker v. Wilson, supra, this Court analyzed a statute which granted to persons in various types of public institutions a Supplemental Security Income allowance provided that the institution was receiving Medicaid benefits for their care. Because this Court found no evidence of an intention on the part of Congress to classify on the basis of mental illness, it upheld the challenged statute. This case is different because the City of Cleburne clearly intends to discriminate against the mentally retarded by distinguishing between "hospitals" for the "feeble-minded" and hospitals for others. This Court's decision in Schweiker is also distinguishable because in that case an even more deferential standard was applied than is applied in the usual case. This Court pointed out that it "has granted a 'strong presumption of constitutionality' to legislation concerning monetary benefits because it believes that Congress should have discretion in deciding how to expend necessarily limited resources." Id. at 238 (citation omitted). The ordinance in this case affects no such monetary benefits, but affects the

right of the retarded to live where they wish.

A challenged zoning ordinance did survive rational basis scrutiny in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). The Belle Terre statute affected residences for students and was based on the conclusion that fraternity houses present urban problems such as crowding and noise which are inconsistent with the legitimate goals of having a single family zone where "yards are wide, people few, and motor vehicles restricted." Id. at 9. The Cleburne ordinance is clearly distinguishable because it affects group homes for the retarded in a residential district which allows not only fraternity houses but apartment houses, boarding houses, hospitals, and nursing homes. Unlike the fraternity house in Belle Terre, there is no basis for concluding that the presence of a residence for the retarded would affect legitimate interests of the neighbors. As the court below found, retarded persons do not disturb neighborhood peace and do not drive cars any more frequently or receive visitors more often. Cleburne, supra, 726 F.2d at 200-201.

The City suggests that its zoning ordinance is valid based on the balancing of interests between prospective

residents and the surrounding neighbors (Petitioner's Brief at p. 24). Such a balance has a far different result in this case from the result in Belle Terre. The interest of the retarded in not being excluded from a community is far greater than was the interest of the students. The interest of mentally retarded persons is tantamount to an interest in liberty, for without group homes in the community the only alternative for most is institutionalization. See Cleburne, supra, 726 F.2d at 193.

CONCLUSION

For the foregoing reasons, Amicus State of Maryland urges this Court to affirm the decision of the court below on the ground that the challenged ordinance does not rationally promote any legitimate zoning objective.

Respectfully submitted,

STEPHEN H. SACHS,
Attorney General

DENNIS M. SWEENEY, Counsel of
Record, Deputy Attorney General

ELLEN A. CALLEGARY,
Special Assistant
to the Attorney General

JUDITH K. SYKES,
Assistant Attorney General

REBECCA M. HORNBECK,
Staff Attorney